

Benjamin R. Graybill  
GRAYBILL LAW FIRM, P.C.  
300 4<sup>th</sup> Street North  
PO Box 3586  
Great Falls, MT 59403  
Telephone: (406) 452-8566  
Telefax: (406) 727-3225  
brg@silverstatelaw.net  
ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION

---

|   |                 |
|---|-----------------|
| ESTATE OF MELVIN RUNNING WOLF, )              | Cause No. _____ |
| by and through the personal representative, ) |                 |
| Mona Running Wolf, )                          |                 |
| )   |                 |
| )   |                 |
| Plaintiff, )                                  |                 |
| )   |                 |
| vs. )   |                 |
| )   |                 |
| UNITED STATES OF AMERICA, )                   | COMPLAINT       |
| )   |                 |
| Defendant. )                                  |                 |

---

NOW COMES the Plaintiff, identified above, and for its claims against the Defendant alleges as follows:

JURISDICTION AND VENUE

1. The claims contained herein against the United States arise under the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680.

2. This Court is vested with jurisdiction by 28 U.S.C. § 1346(b).

3. On December 26, 2018, in accordance with 28 USC §§ 2401 & 2675, and in accordance with 28 CFR 14.2 & 25 CFR 900.201, Melvin Running Wolf and Mona Running Wolf sent separate Claim for Damage, Injury or Death Forms, stating claims against the United States, to the United States Department of Health and Human Services, Claims office, and the Indian Health Service. The United States neither accepted nor denied the above-referenced claims within six months of the date such claims were sent; accordingly, Plaintiff brings the action herein.

4. Venue is proper under 28 U.S.C. § 1402(b) because this is the judicial district where the Plaintiff resided and wherein the acts complained of occurred.

#### THE PARTIES

5. The Plaintiff, Estate of Melvin Running Wolf (hereinafter “Estate”) was admitted to probate in the Montana Ninth Judicial District, Glacier County, Cause No. DP-19-18; Mona Running Wolf was appointed as personal representative on June 20, 2019 (Exhibit “A”).

6. Mona Running Wolf was at all relevant times the wife of Melvin Running Wolf.

7. The Defendant, United States of America, operates a health facility, known as the Blackfeet Community Hospital, located in Browning, Montana, and

within the exterior boundaries of the Blackfeet Indian Reservation (“Browning IHS facility”).

### FACTS

8. On November 23, 2011, Melvin Running Wolf presented to the Browning IHS facility for treatment of umbilical hernia pain. A CT of the abdomen and pelvis was obtained that showed “a dominant lesion measuring 1.8 cm across.” The radiologist who read the CT scan, James Schumacher, M.D., noted that “hepatoma would be difficult to exclude and consider MRI with and without contrast for optimal further evaluation...unless clinically not indicated.”

9. Mr. Running Wolf was attended to at this visit by physicians Bashir Sheikh, M.D. and Andrew Garrison, M.D., both employees of the Indian Health Service.

10. The radiologist, Dr. Schumacher, discussed his findings with Dr. Sheikh.

11. On November 24, 2011 Mr. Running Wolf was transferred from the Browning IHS facility to Kalispell Regional Medical Center for medical treatment related to an irreducible umbilical hernia.

12. The lesion on Mr. Running Wolf’s liver was not disclosed to Mr. Running Wolf by any medical providers at the Browning IHS facility. He was not advised to seek follow up care for investigation and treatment of the lesion.

13. From the date that the lesion was found, November 23, 2011, until March 7, 2018, Mr. Running Wolf repeatedly obtained medical treatment at the Browning IHS facility, but during that time he was not advised of the existence of the lesion or the necessity for follow up investigation and treatment.

14. On March 7, 2018 Mr. Running Wolf was seen at the Browning IHS facility for stomach cramps. On March 8, 2018 a CT scan revealed a large heterogeneous enhancing right hepatic lobe mass measuring 11.1 x 15.7 x 10.8 cm.

15. The tumor seen on the CT scan of March 8, 2018 is the same lesion revealed by imaging on November 23, 2011.

16. Mr. Running Wolf was referred to Northwest Surgical Associates in Kalispell for biopsy. He was subsequently diagnosed with hepatocellular carcinoma.

17. Mr. Running Wolf underwent substantial treatment to combat his cancer, but unfortunately, as a result of the cancer, died on March 30, 2019, at age 63.

18. Mr. Running Wolf did not discover and could not have discovered the tumor or that it had increased in size until he was made aware of the March 8, 2018 CT scan and was also informed of the results of the November 23, 2011 CT scan.

19. The Defendant United States, by and through its employees and agents working at the Browning IHS facility, owed Mr. Running Wolf a duty to

use the same care and skill ordinarily exercised in like cases by other qualified doctors practicing in the same field of medicine and under the same circumstances.

20. The advanced stage of Mr. Running Wolf's cancer and his death were caused as a result of the United States' failure to disclose to him the tumor on his liver in November 2011, and advise him to obtain follow up investigation and treatment.

21. The Defendant, United States, by and through its employees and agents, was careless and negligent in its treatment of Melvin Running Wolf, and thereby caused Melvin Running Wolf to suffer severe personal injury, substantial expense, loss of income, mental anguish, emotional distress, pain, suffering, and death.

22. Melvin Running Wolf's injuries and death, caused by the United States as aforesaid, resulted in a loss of consortium to his wife Mona Running Wolf in her relationship with her husband.

23. Melvin Running Wolf's death, caused by United States, as aforesaid, resulted in a loss of, comfort, society, guidance, education, care, protection, and companionship to his heirs, including Mona Running Wolf, resulting in grief, despair, and mental anguish.

///

///

## CAUSES OF ACTION

(The following causes of action hereby incorporate, by reference, all preceding paragraphs of this Complaint.)

### FIRST CAUSE OF ACTION

24. This is a cause of action by the Plaintiff, the Estate of Melvin Running Wolf, by and through the Personal Representative Mona Running Wolf, against the Defendant, United States of America, for negligence resulting in wrongful death damages.

### SECOND CAUSE OF ACTION

25. This is a cause of action by the Plaintiff, the Estate of Melvin Running Wolf, by and through the Personal Representative Mona Running Wolf, against the Defendant, United States of America, for negligence resulting in survivorship damages.

### THIRD CAUSE OF ACTION

26. This is an action, by Plaintiff, pursuant to § 28 USC 2201(a), and to the extent it provides substantive relief, M.C.A. §§ 27-8-101, et seq., for declaratory judgment to afford relief from uncertainty with regard to the rights and other legal relations of the parties.

27. Plaintiff contends, and seeks judgment declaring, that any portion of § 25-9-411, MCA, a Montana statute purporting to limit the total award for non-economic damages to plaintiffs in medical negligence lawsuits to \$250,000,

violates the United States Constitution and the Montana Constitution as follows:

- a. The arbitrary damage limitation in § 25-9-411, MCA violates the right to trial by jury guaranteed by Article II, § 26 of the Montana Constitution, and the Seventh Amendment of the United States Constitution;
- b. The arbitrary damage limitation in § 25-9-411, MCA violates the right to full legal redress set forth in Article II, § 16 of the Montana Constitution;
- c. The arbitrary damage limitation in § 25-9-411, MCA violates the right to equal protection guaranteed by Article II, § 4 of the Montana Constitution, and the Fourteenth Amendment of the United States Constitution;
- d. The arbitrary damage limitation set forth in § 25-9-411, MCA violates the right to substantive due process set forth in Article II, § 17 of the Montana Constitution, and the Fourteenth Amendment of the United States Constitution;
- e. The arbitrary damage limitation set forth in § 25-9-411, MCA violates the prohibition contained in Article II, § 31 of the Montana Constitution, prohibiting laws purporting to grant special privileges or immunities;
- f. The arbitrary damage limitation set forth in § 25-9-411, MCA violates the principal of separation of powers established by Article III, § 1 of the Montana Constitution.

28. The United States, in previous litigation, has been known to assert that § 25-9-411, MCA does not violate the above identified constitutional provisions.

29. An actual controversy exists between Plaintiff and the United States regarding whether § 25-9-411, MCA violates the United States Constitution and the Montana Constitution.

30. All persons who have any claim or interest which would be affected by such declaration are parties to this litigation and such declaration will not prejudice the rights of persons who are not parties to these proceedings. The Attorney General of the State of Montana has been served with a copy of these proceedings, pursuant to M.R.Civ.P. 5.1(a) and § 27-8-301, MCA.

#### CLAIMS FOR RELIEF

WHEREFORE the Plaintiffs respectfully request the following relief:

A. The Plaintiff, Estate of Melvin Running Wolf, by and through the personal representative Mona Running Wolf, demands judgment against the Defendant, United States of America, with an award of compensatory damages, costs, interest, pre-judgment interest, and for any other relief as this Court deems proper and just as to the First and Second Causes of Action, and for declaratory judgment, as to the Third Cause of Action, that M.C.A. § 25-9-411 does not apply to this action, and to the extent that it does the arbitrary damage limitation set forth in M.C.A. § 25-9-411 is unconstitutional and void.



DATED this 13<sup>th</sup> day of January, 2020.

GRAYBILL LAW FIRM, P.C.

By 

Benjamin R. Graybill